SUBJECT INDEX

PAGE

Opinions below 1

Jurisdiction 1

Question presented 2

Statutes and regulations involved 2

Statement of the case 2

Specification of errors to be urged 3

Reasons for granting the writ 4

I.

The decision of the court below, in holding subject to the federal estate tax a surviving wife's original one-half interest in jointly held property acquired with community funds, is in conflict with decisions of this court holding that the wife's half interest in community property is an ownership interest 4

II.

To the extent of the reliance of the court below on Treasury Regulations 105, Section 81.22, its decision is in conflict with decisions of this court holding that the Treasury Department cannot amend the law by regulation 5

III.

To the extent of the reliance of the court below on Treasury Regulations 105, Section 81.22, its decision is also in conflict with decisions of this court holding that, in the application of a federal revenue act, state law controls in determining the nature of the legal interest which the taxpayer has in property 8

Conclusion 10

Appendix. Statutes and Regulations involved ..... App. p. 1

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TABLE OF AUTHORITIES CITED

Cases	Page
Blair v. Commissioner, 300 U. S. 5	9
Commissioner v. Mills, 183 F. 2d 32	6
Estate of Heidt v. Commissioner, 170 F. 2d 1021; affd., 8 T. C. 969	6
Estate of Paul M. Vandenhoeck v. Commissioner, 4 T. C. 125	8
Goodell v. Koch, 282 U. S. 118	4, 5
Helvering v. Sabine Transportation Co., Inc., 318 U. S. 306	7
Hopkins v. Bacon, 282 U. S. 122	4, 5
Maass, Exr. v. Higgins, 312 U. S. 443	7
Poe v. Seaborn, 282 U. S. 101	4, 5, 9
Rickenberg v. Commissioner, 177 F. 2d 114; cert. den., 338 U. S. 949	6
United States v. Malcolm, 282 U. S. 792	4, 5, 9
Miscellaneous	
Cumulative Bulletin (1944), 1, 29, Ruling No. 1944-24-11907	8
Treasury Decision 5239 (Mar. 10, 1943, 8 F. R. 3034, 26 C. F. R., Cum. Supp.)	5
United States Tax Court 51-1, par. 10818	1
Statutes	
California Civil Code, Sec. 161a	2, 3, 4, 6, 9
Internal Revenue Code, Sec. 811(a)(1)	3
Internal Revenue Code, Sec. 811(d)(5)	5
Internal Revenue Code, Sec. 811(e)	8, 9
Internal Revenue Code, Secs. 811(e) to 811(e)(1)	8
Internal Revenue Code, Sec. 811(e)(1)	7, 8, 9
Internal Revenue Code, Sec. 811(e)(2)	5, 8
Internal Revenue Code, Sec. 811(g)(4)	5
Treasury Regulations 105, Sec. 81.15	6
Treasury Regulations 105, Sec. 81.22	6, 7, 9
Treasury Regulations 108, Sec. 86.2(c)	6
Textbooks	
United States Code, Title 28, Sec. 1254(1)	1

IN THE

Supreme Court of the United States

October Term, 1952.

No. .....

RUTH FORBES STEEN, formerly RUTH FORBES McLEOD,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on March 25, 1952.

Opinions Below.

The opinion of the District Court [R. 8-9] does not appear to have been reported except at 51-1 U. S. T. C. ¶10818. The opinion of the Court of Appeals [R. 36-39] is reported at 195 F. 2d 379.

Jurisdiction.

The judgment of the Court of Appeals was entered on March 25, 1952. [R. 39.] The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

Question Presented.

Among the statutory provisions setting forth the interests included in a decedent's gross estate for federal estate tax purposes there was, during the period applicable to this estate, the following:

> (1) Joint Interests.—To the extent of the interest therein held as joint tenants by the decedent and any other person *except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth:*
>
> . . .

The sole question here is whether the exception provision set forth above in italics does or does not cover a surviving wife's original one-half share of jointly held property, where such property was acquired with earnings of the husband which were community property subject to Section 161a of the Civil Code of California.

The entire subsection of the federal estate tax law from which the part above quoted is taken is set forth in the Appendix herein, page 1.

Statutes and Regulations Involved.

The text of the statutes and regulations involved is contained in the Appendix herein.

Statement of the Case.

The facts were all precisely stipulated, and as so stipulated were found by the District Court.

Appellant is the executrix and sole distributee of the Estate of Norman A. McLeod, deceased. [R. 10.] Ap-

pellant and the decedent were married October 5, 1934, in California and resided therein until the date of the decedent's death, May 12, 1946. [R. 11-12.]

The estate tax return of said estate included jointly held property totaling $36,619.50. All of the items of that property were acquired by decedent and the appellant with funds which consisted wholly of community property and were accumulated by them as community property, as the term "community property" is used in Section 161a of the Civil Code of California; and the said funds in their entirety were derived originally from compensation for personal services actually rendered by the decedent during his said marriage to the appellant. [R. 12.]

At the time of the decedent's death said property, totaling $36,619.50, was not community property but was property held by decedent and appellant as joint tenants, as the term "joint tenants" is used in Section 811(a)(1) of the Internal Revenue Code as it read on the date of decedent's death. [R. 12.]

The district court allowed to appellant certain items not involved in this appeal, but disallowed to appellant exclusion from the gross estate of her original one-half interest in said jointly held property totaling $36,619.50. [R. 13.] The court of appeals affirmed that judgment. [R. 39.]

Specification of Errors to Be Urged.

Petitioner specifies the following error of the Court of Appeals for the Ninth Circuit:

Failure to hold that there should be excluded from the decedent's gross estate, one-half of jointly owned property included at a total of $36,619.50 and acquired with community funds.

REASONS FOR GRANTING THE WRIT.

I.

The Decision of the Court Below, in Holding Subject to the Federal Estate Tax a Surviving Wife's Original One-half Interest in Jointly Held Property Acquired With Community Funds, Is in Conflict With Decisions of This Court Holding That the Wife's Half Interest in Community Property Is an Ownership Interest.

The statute involved here expressly, and in clear words, excludes from jointly held property subject to the estate tax the interest in such property which originally belonged to the survivor and was never received or acquired by her from the decedent. (*Infra,* Appendix, p. 1.)

The funds with which the jointly held property involved here was acquired consisted of income, compensation received by the decedent for his services; and such income, it was expressly stipulated and found by the trial court herein, was "community property, as the term 'community property' is used in Section 161a of the Civil Code of California."

In *Poe v. Seaborn,* 282 U. S. 101, *Goodell v. Koch,* 282 U. S. 118, and *Hopkins v. Bacon,* 282 U. S. 122, involving income in Washington, Arizona, and Texas, respectively, this court held that the wife's interest in community property amounted to *ownership* of a one-half share in such property. In *United States v. Malcolm,* 282 U. S. 792, this court applied the same rule specifically to community property subject to Section 161a of the Civil Code of California. It is clear, then, under the decisions of this court, that one-half of community property subject to Section 161a of the Civil Code of California *belongs* to the wife. It is clear, also, that where, as here, the property was such

community property in the beginning, as earned, the wife's half interest was never received or acquired by her from the decedent.

It follows necessarily that the wife's original half interest in the jointly held property involved here originally belonged to her and was never received or acquired by her from the decedent. It would be necessary for this court to overrule the *Malcolm, Poe, Goodell,* and *Hopkins* cases, *supra,* which have stood unchallenged now for more than two decades, in order to sustain the decision rendered by the court below.

II.

To the Extent of the Reliance of the Court Below on Treasury Regulations 105, Section 81.22, Its Decision Is in Conflict With Decisions of This Court Holding That the Treasury Department Cannot Amend the Law by Regulation.

The regulation referred to, quoted in the Appendix herein, page 3, is one of a group adopted under Treasury Decision 5239 (March 10, 1943, 8 F. R. 3034, 26 C. F. R., Cum. Supp.), which attempted to establish, for the purposes of the federal estate tax, a federal rule of community property under which the earnings of the husband would be treated as his property in their entirety regardless of local law. Congress in 1942 adopted provisions having such effect, but only in relation to the following: (a) community property held as such on the earner's death—I. R. C., Sec. 811(e)(2); (b) community property transferred *inter vivos*—I. R. C., Sec. 811(d)(5); and (c) community property used in payment of life insurance premiums—I. R. C., Sec. 811(g)(4). The Treasury Department thereupon tried to round out the work of Con-

gress by extending those provisions by regulation as follows: (a) under the heading of transfers *inter vivos,* to community property divided equally between the spouses, or converted into tenancy in common, joint tenancy, or tenancy by the entirety—Reg. 105, Sec. 81-15;[1] (b) under the heading of property held in joint tenancy on the decedent's death, to community property converted into joint tenancy and so held on the decedent's death—Reg. 105, Sec. 81.22.[2] The Treasury Department also attempted to apply the same rule to such conversions for purposes of the gift tax—Reg. 108, Sec. 86.2(c).

One panel of the court below struck down the first and third of these regulations, that is, Reg. 105, Sec. 81.15, and Reg. 108, Sec. 86.2(c). (*Rickenberg v. Commissioner,* 177 F. 2d 114, certiorari denied, 338 U. S. 949, and *Commissioner v. Mills,* 183 F. 2d 32.) The court in each case held that the conversion was no transfer at all, since each spouse owned a half interest before as well as after the conversion. The decision herein below, allowing the second of these regulations, that is, Reg. 105, Sec. 81.22, to stand, was rendered by a different panel of that court, relying upon its own previous decision in *Estate of Heidt v. Commissioner,* 170 F. 2d 1021, which affirmed without opinion 8 T. C. 969.[3]

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[1] *Infra,* Appendix, p. 3.

[2] *Infra,* Appendix, p. 5.

[3] The regulation was not actually in issue in the *Heidt* case, since the property there involved, as the Tax Court opinion therein shows, was accumulated prior to the enactment of Section 161a of the Civil Code of California [*infra,* Appendix, p. 3], and was not therefore property in which the wife had a vested one-half interest.

In allowing that regulation to stand, the decision herein below stands in direct conflict with *Helvering v. Sabine Transportation Co., Inc.*, 318 U. S. 306. In that case this court stated, at page 311:

> "It remains to consider the Treasury Regulations promulgated under the 1938 Act. These forbid a credit such as that claimed in this case, calling it a 'double credit.' We think the regulations are in the teeth of the unambiguous mandate of the statute, are contradictory of its plain terms, and amount to an attempt to legislate. They cannot prevail to preclude the credit claimed."

To the same effect, *Maass, Exr. v. Higgins*, 312 U. S. 443, wherein this court, at page 447, sustained the contention of petitioner therein that the Treasury regulation there involved was "an unwarranted extension of the plain meaning of the statute."

There is no ambiguity whatever in the statutory provision involved here, I. R. C., Sec. 811(e)(1). That provision excludes from the scope of the tax the interest of the surviving joint tenant which "originally belonged" to her and was never "received or acquired" by her from the decedent. The words are simple and plain. What the regulation, Regulations 105, Sec. 81.22, attempts to do is to cut down the range of that statutory exclusion. This a regulation may not do. In sustaining the regulation the decision of the court below stands in clear conflict with the decisions of this court in the *Sabine* and *Maass* cases cited above.

III.

To the Extent of the Reliance of the Court Below on Treasury Regulations 105, Section 81.22, Its Decision Is Also in Conflict With Decisions of This Court Holding That, in the Application of a Federal Revenue Act, State Law Controls in Determining the Nature of the Legal Interest Which the Taxpayer Has in Property.

When Congress amended the estate tax law in 1942, as explained above, page 5, it made no change whatever in the provision relating to property held by the decedent and another as joint tenants at the time of the decedent's death. The number of that provision was changed from 811(e) to 811(e)(1), so as to make room for 811(e)(2), referred to above, covering property held as community property at the time of the decedent's death. But in the renumbering thus of 811(e) as 811(e)(1), not a word of its text was changed.

The Tax Court had held in respect to the former 811(e) that it had precisely the meaning contended for by petitioner here in respect to 811(e)(1). *Estate of Paul M. Vandenhoeck v. Commissioner,* 4 T. C. 125, in which the court stated, at page 137:

> "In our judgment the same result would obtain if we consider that the stock was owned and held by petitioner and the decedent as joint tenants, as contended by the respondent. Since it was purchased with community funds, one-half the consideration was furnished by petitioner; therefore, only one-half of the value thereof is includible in gross estate under section 811(e), *supra.*"

By a ruling the Commissioner expressly acquiesced in that decision. (Ruling No. 1944-24-11907, 1944 C. B. 1, 29.)

There is nothing whatever to indicate that by changing the number of the statutory provision involved from 811(e) to 811(e)(1) Congress intended its meaning to be changed.

But the Treasury Department amended the corresponding provision of its regulations, Section 81.22 of Reg. 105, to provide that:

> "where the joint tenancy or tenancy by the entirety was created by the transfer of property held as community property by such decedent and his spouse, such decedent is considered as the original owner of all of the community property so transferred, except such part thereof as may be shown to have been received as compensation for personal services rendered by his spouse or derived originally from such compensation or from such separate property of such spouse."

Whether a decedent was or was not the owner of specified property is a question governed by local law, at least where, as here, Congress did not intrude its own definition. This is the clear rule established by this court. (*Poe v. Seaborn, supra,* p. 110; *Blair v. Commissioner,* 300 U. S. 5, 9.) It was not competent for the Treasury Department to superimpose its own theory of ownership upon the law of California. This court, moreover, had already determined that the wife was the owner of a half interest in community property under Section 161a of the Civil Code of California. (*United States v. Malcolm, supra.*) It follows that in allowing Treasury Regulations 105, Section 81.22, to stand, the decision below is in conflict with the settled rule, established by this court, that in the application of a federal revenue act ownership of property is determined under the local law.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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